



General Assembly

Substitute Bill No. 5220

February Session, 2010

* ____HB05220JUD__041310__ *

AN ACT CONCERNING COMPETITION IN THE MOTOR FUEL INDUSTRY.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective January 1, 2011*) (a) Any person
2 conducting business in the motor fuel industry in this state that files
3 merger, acquisition or any other information regarding market
4 concentration in the motor fuel industry in this state with the Federal
5 Trade Commission or the United States Department of Justice shall
6 simultaneously file a copy of the same information with the Attorney
7 General of this state. For purposes of this section, "motor fuel" shall
8 have the same meaning as defined in section 14-327a of the general
9 statutes and "person" shall have the same meaning as used in
10 subsection (k) of section 1-1 of the general statutes.

11 (b) After reviewing information filed pursuant to subsection (a) of
12 this section, the Attorney General may measure the market
13 concentration and changes in market concentration in the motor fuel
14 industry in this state due to such merger, acquisition or any other
15 information. Such measurement shall include the use of the
16 Herfindahl-Hirschman Index.

17 (c) If the Herfindahl-Hirschman Index score determined pursuant to
18 subsection (b) of this section is: (1) Between one thousand and one
19 thousand eight hundred points and increases by more than one

20 hundred points due to information disclosed pursuant to subsection
21 (a) of this section, or (2) equal to or greater than one thousand eight
22 hundred points and increases by more than fifty points due to
23 information disclosed pursuant to subsection (a) of this section, the
24 Attorney General may issue in writing and cause to be served upon
25 any person, by subpoena duces tecum, a demand requiring such
26 person to submit to him or her documentary material relevant to the
27 scope of the Attorney General's investigation. For the purposes of this
28 section, "documentary material" includes, but is not limited to, any
29 information in a written, recorded or electronic form.

30 (d) Such demand shall (1) state the nature of the investigation, (2)
31 describe the class or classes of documentary material to be reproduced
32 with such definiteness and certainty as to be accurately identified, and
33 (3) prescribe a date that allows a reasonable time to assemble such
34 documentary material for compliance.

35 (e) (1) All documentary material furnished to the Attorney General,
36 his or her deputy or any assistant attorney general designated by the
37 Attorney General, pursuant to a demand issued under subsection (c) of
38 this section, shall be held in the custody of the Attorney General, or the
39 Attorney General's designee, and shall not be available to the public.
40 Such documentary material shall be returned to the person furnishing
41 such documentary material upon the termination of the Attorney
42 General's investigation or final determination of any action or
43 proceeding commenced thereunder.

44 (2) All documentary material or other information furnished
45 voluntarily to the Attorney General, his or her deputy or any assistant
46 attorney general designated by the Attorney General that relates to an
47 investigation of the Attorney General pursuant to this section and the
48 identity of the person furnishing such documentary material or other
49 information shall be held in the custody of the Attorney General, or the
50 Attorney General's designee, and shall not be available to the public.
51 Such documentary material or other information shall be returned to
52 the person furnishing such documentary material or other information

53 upon the termination of the Attorney General's investigation or final
54 determination of any action or proceeding commenced thereunder.

55 (f) No such demand shall require the submission of any
56 documentary material, the contents of which would be privileged or
57 precluded from disclosure if demanded in a grand jury investigation.

58 (g) The Attorney General, his or her deputy or any assistant
59 attorney general designated by the Attorney General may, during the
60 course of an investigation of any antitrust violations by any person, (1)
61 issue in writing and cause to be served upon any person, by subpoena,
62 a demand that such person appear before him or her and give
63 testimony as to any matters relevant to the scope of the alleged
64 violations. Such appearance shall be under oath and a written
65 transcript made of the same, a copy of which shall be furnished to such
66 person appearing and shall not be available for public disclosure; and
67 (2) issue written interrogatories prescribing a return date that allows a
68 reasonable time to respond, which responses shall be under oath and
69 shall not be available for public disclosure.

70 (h) In the event any person fails to comply with the provisions of
71 subsections (c) to (g), inclusive, of this section, (1) the Attorney
72 General, his or her deputy or any assistant attorney general designated
73 by the Attorney General may apply to the superior court for the
74 judicial district of Hartford for compliance, which court may, upon
75 notice to such person, issue an order requiring such compliance, which
76 shall be served upon such person; and (2) the Attorney General, his or
77 her deputy or any assistant attorney general designated by the
78 Attorney General may also apply to the superior court for the judicial
79 district of Hartford for an order, which court may, after notice to such
80 person and hearing thereon, issue an order requiring the payment of
81 civil penalties to the state in an amount not to exceed five thousand
82 dollars.

83 (i) The Attorney General shall cooperate with officials of the federal
84 government and the several states, including, but not limited to, the

85 sharing and disclosure of information and evidence obtained under
86 the purview of this section.

87 (j) Service of subpoenas ad testificandum, subpoenas duces tecum,
88 notices of deposition and written interrogatories, as provided in this
89 section, may be made by: (1) Personal service or service at the usual
90 place of abode; or (2) registered or certified mail, return receipt
91 requested, a duly executed copy thereof addressed to the person to be
92 served at such person's principal place of business in this state or, if
93 such person has no principal place of business in this state, at such
94 person's principal office or such person's residence.

95 (k) A violation of subsection (a) of this section shall be deemed an
96 unfair or deceptive trade act or practice under subsection (a) of section
97 42-110b of the general statutes.

98 Sec. 2. Section 42-234 of the general statutes is repealed and the
99 following is substituted in lieu thereof (*Effective January 1, 2011*):

100 (a) As used in this section:

101 (1) "Energy resource" shall include, but not be limited to, middle
102 distillate, residual fuel oil, motor gasoline, propane, aviation gasoline
103 and aviation turbine fuel, natural gas, electricity, coal and coal
104 products, wood fuels and any other resource yielding energy;

105 (2) "Seller" shall include, but not be limited to, a supplier,
106 wholesaler, distributor or retailer involved in the sale or distribution in
107 this state of an energy resource;

108 (3) "Abnormal market disruption" refers to any stress to an energy
109 resource market resulting from weather conditions, acts of nature,
110 failure or shortage of a source of energy, strike, civil disorder, war,
111 national or local emergency, oil spill or other extraordinary adverse
112 circumstance;

113 (4) "Margin" means, for each grade of product sold, the percentage

114 calculated by the following formula: One hundred multiplied by a
115 fraction, the numerator of which is the difference between the sales
116 price per gallon and the rack price per gallon and the denominator of
117 which is the rack price per gallon;

118 (5) "Notice" means a posting made by the Attorney General
119 pursuant to subsection (d) of this section announcing the inception and
120 end date of any abnormal market disruption or the reasonable
121 anticipation of any imminent abnormal market disruption.

122 (b) No seller during any period of abnormal market disruption or
123 during any period in which an imminent abnormal market disruption
124 is reasonably anticipated shall sell or offer to sell an energy resource
125 for an amount that represents an unconscionably excessive price.

126 (c) Evidence that (1) the amount charged represents a gross
127 disparity between the price of an energy resource that was the subject
128 of the transaction and the price at which such energy resource was
129 sold or offered for sale by the seller in the usual course of business
130 immediately prior to (A) the onset of an abnormal market disruption,
131 or (B) any period in which an imminent abnormal market disruption is
132 reasonably anticipated, and (2) the amount charged by the seller was
133 not attributable to additional costs incurred by the seller in connection
134 with the sale of such product, shall constitute prima facie evidence that
135 a price is unconscionably excessive.

136 (d) The Attorney General shall post a notice on the home page of the
137 Internet web site of the office of the Attorney General announcing the
138 inception and end date of any abnormal market disruption or the
139 reasonable anticipation of any imminent abnormal market disruption.

140 (e) Notwithstanding the provisions of subsections (b) and (c) of this
141 section, it shall not be a violation of this section if a seller sells or offers
142 to sell motor gasoline during an abnormal market disruption or any
143 period in which an imminent abnormal market disruption is
144 reasonably anticipated if the seller's average margin for such motor

145 gasoline during the longer of the following: (1) Any such period of
 146 abnormal market disruption or imminent abnormal market disruption,
 147 or (2) thirty days following the date notice was provided by the
 148 Attorney General pursuant to subsection (d) of this section, is not
 149 greater than such seller's maximum margin on the sale of such motor
 150 gasoline during the ninety-day period prior to the onset of the
 151 abnormal market disruption or period in which an imminent abnormal
 152 market disruption is reasonably anticipated.

153 [(d)] (f) This section shall not be construed to limit the ability of the
 154 Commissioner of Consumer Protection or the courts to establish
 155 certain acts or practices as unfair or unconscionable in the absence of
 156 abnormal market disruptions.

This act shall take effect as follows and shall amend the following sections:		
Section 1	January 1, 2011	New section
Sec. 2	January 1, 2011	42-234

GL Joint Favorable Subst.

JUD Joint Favorable